



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2021-0904]

RIN 1625-AA08

Special Local Regulation; 2022 Horsepower on the Hudson, Hudson River, Castleton, NY

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations on certain waters of the Hudson River in the vicinity of Castleton-on-the-Hudson, New York, in support of the Horsepower on the Hudson event on August 6, 2022. This action is necessary to ensure the safety of participants, participant vessels, spectators, and mariners transiting the area from the dangers associated with vessels operating at high-speeds during the Horsepower on the Hudson event. This rulemaking will allow the Coast Guard to enforce vessel movements within three regulated areas and temporarily restrict vessel traffic in a portion of the Hudson River between Hudson River Lighted Buoy 202 (LLNR 38905) to Hudson River Light 204 (LLNR 38910).

DATES: This rule is effective from 10 a.m. through 4 p.m. on August 6, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0904 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email For information about this document call or email MST2 T. Whitley, Waterways Management Division, U.S. Coast Guard; telephone 718-354-4356, email D01-SMB-SecNY-Waterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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|--------|---------------------------------|
| CFR | Code of Federal Regulations |
| COTP | Captain of the Port New York |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| LLNR | Light List Number |
| NPRM | Notice of proposed rulemaking |
| OMB | Office of Management and Budget |
| § | Section |
| U.S.C. | United States Code |

II. Background Information and Regulatory History

On October 10, 2021, the Coast Guard received an Application for Marine Event from the Castleton Boat Club for the Horsepower on the Hudson event. In response, on March 16, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Special Local Regulation; 2022 Horsepower on the Hudson, Hudson River, Castleton, NY” (87 FR 14814). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this high speed boating event. During the comment period that ended April 15, 2022, we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is establishing a special local regulation for the Horsepower on the Hudson event from 10 a.m. to 4 p.m. on August 6, 2022. The special local regulation will cover all navigable waters of the Hudson River between Hudson River Lighted Buoy 202 (LLNR 38905) to Hudson River Light 204 (LLNR 38910).

The Coast Guard is issuing this rule under authority in 46 U.S.C.70041. The Captain of the Port New York/New Jersey (COTP) has determined that to ensure the

safety of participants, vessels, and the navigable waters in the vicinity of the high speed race route and the spectator zone before, during, and after the scheduled event on August 06, 2022. The purpose of this rule is to protect all waterway users, including event participants and spectators, during the event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published March 16, 2022. The comment was solely in favor of the rule. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a special local regulation from 10 a.m. to 4 p.m. on August 6, 2022. The special local regulation will cover all navigable waters of the Hudson River between Hudson River Lighted Buoy 202 (LLNR 38905) to Hudson River Light 204 (LLNR 38910). The duration of the special local regulation is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 10 a.m. to 4 p.m. high speed event. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation.

Marine traffic will continue to be able to transit via the main navigable channel. The special local regulation is limited in duration and to a narrowly tailored geographic area with designated and adequate space for transiting vessels to pass via the main navigation channel when permitted by the COTP or designated representative. In addition, although this rule restricts access to the waters encompassed by the local regulation, the effect of this rule will not be significant because the local waterway users will be notified in advance via public Broadcast Notice to Mariners. To ensure the special local regulation will result in minimum impact the main navigation channel will be maintained allowing vessels to transit the Hudson River outside of the high speed area or the spectator area. Mariners will therefore be able to plan ahead and either transit through the available transit area or outside the periods of enforcement of the special local regulation. Moreover, mariners may be able to transit the high speed area or spectator areas with approval from the COTP.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated area lasting 6 hours that would limit persons or vessels from transiting certain regulated areas during the scheduled event. It is categorically excluded from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add §100.T01-0904 to read as follows:

§ 100.T01-0904 Special Local Regulation; 2022 Horsepower on the Hudson, Hudson River, Castleton, NY.

(a) *Regulated areas.* The regulations in this section apply to the following regulated areas:

(1) *High speed area.* All navigable waters of the Hudson River from Hudson River Lighted Buoy 202 (LLNR 38905) to Hudson River Light 204 (LLNR 38910) east of the navigable channel shoreward.

(2) *Transit area.* All navigable waters of the main navigation channel of the Hudson River from Hudson River Lighted Buoy 202 (LLNR 38905) to Hudson River Light 204 (LLNR 38910).

(3) *Spectator area.* All navigable waters of the Hudson River from Hudson River Lighted Buoy 201 (LLNR 38903) to Hudson River Lighted Buoy 205 (LLNR 38915) west of the navigable channel shoreward.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port New York (COTP) in the enforcement of the safety zone.

Participant means all persons and vessels registered with the event sponsor as a participants in the race.

Spectator means any vessel in the vicinity of the event with the primary purpose of witnessing the event. Spectator vessels can observe the marine event from the designated spectator area.

(c) *Regulations.* (1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas described in paragraph (a) of this section unless authorized by the COTP or their designated representative.

(2) To seek permission to enter, contact the COTP or the designated representative via VHF-FM Marine Channel 16 or by contacting the Coast Guard Sector New York command center at (718) 354-4356 or on VHF 16 to obtain permission. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(d) *Enforcement period.* This section will be enforced from 10 a.m. through 4 p.m. on August 6, 2022.

(e) *Information broadcasts.* The COTP or the designated representative will inform the public through Broadcast Notice to Mariners of any changes in the planned schedule.

Dated: May 16, 2022.

Z. Merchant,
Captain, U.S. Coast Guard,
Captain of the Port New York.

[FR Doc. 2022-10845 Filed: 5/19/2022 8:45 am; Publication Date: 5/20/2022]